Whether approved for reporting ? Yes

For the appellant(s):Mr.Ashok Sharma,Advocate

For the respondent(s): Mr.Lalit Sharma,Advocate

Deepak Gupta,J.(Oral)

This appeal under Section 30 of the Workmen's Compensation Act is directed against the award of the Commissioner under the Workmen's Compensation Act, Rampur Bushehar, District Shimla in case No. 13/99, decided on 27.1.2003. This appeal was admitted on 12.6.2003 on the following substantial question of law:-

> "1. Whether the deceased workman Partap Singh was discharging the official duties at the time of the accident resulting in his death or not ?

The brief facts relevant for deciding this question are that the deceased, Pratap Singh, was employed as a helper in the H.R.T.C. He was posted in

bus.

RW-2 further states that the deceased did not return to Rampur on 13.11.1998 and spent the night with him. He further states that the next day, i.e. on 14.11.1998 the deceased left for Rampur Bushehar at about 10.00 a.m. According to RW-1 Nand Lal, who is the store keeper of H.R.T.C. one centre bolt had been issued to the deceased Pratap Singh on 13.11.1998 for use in the repair of the bus. However, the said bolt was not used and the same was returned on 14.11.1998. However, this witness has not produced any record with regard to the issuance or return of the centre bold and not much reliance can be placed on his evidence.

PW-2 is one Takku Ram, who is the landlord of the deceased. According to this witness on 13.11.1998 the deceased told him that he was going to Sungra to repair some bus which had broken down there

presence. In reply to a court question he stated that he saw the dead body somewhere between 6.00 a.m. to 7.00 a.m.

Whereas according to the petitioner the deceased had died while on duty and his death has a causal connection with his employment, according to the H.R.T.C. the deceased was not on duty and his death had no connection whatsoever with his employment. The Commissioner held that the deceased was on duty by applying the principle of notional extension and has awarded compensation of Rs.2,05,950/- alongwith interest and penalty. Aggrieved against this award the employer has filed the present appeal.

I have hard Mr.Ashok Sharma, learned counsel appearing for the claimant and Mr.Lalit Sharma, learned counsel appearing for the claimants.

21/2 to 3 hours, the deceased could legitimately be expected to stay the night at Sungra. He left Sungra at 10.00 a.m. It is undisputed that the journey time from Sungra (Bhawanagar)j to Rampur Bushehar is about 21/2 hours. Therefore, he should have been back in Rampur latest by 1.00 p.m. Even if the version of RW-3 is not believed that the deceased had returned the centre bolt to him, there is no material on record to show where the deceased was after 1.00 p.m. on 14.11.1998.

The dead body of the deceased was found between 6.00 a.m. and 7.00 a.m. on the following morning, i.e. on 15.11.1998. There is no evidence or explanation as to where he was from approximately 1.00 p.m. on 14.11.1998 till his body was found the next morning. It is undisputed that the body of the deceased was found on the National Highway, just opposite his house. The accident must have taken place in the

nothing to show that the deceased was not on duty at that time. According to him the H.R.T.C. has failed to prove the defences raised by it. I am constrained to reject the argument raised by Mr.Lalit Sharma, Advocate. No doubt, the law does provide that there can be some notional extension of the concept of the course of employment. The employment may not cease immediately when the tools are put down. In the present case the deceased may have been said to be on duty at Sungra even during the night time since he had gone to Sungra in relation to his work and had been deputed by his employer to go to Sungra. His return journey would also be covered, but the principle of notional extension cannot be extended beyond that. As already discussed above, from the evidence it is clear that the deceased left Sungra at about 10.00 a.m. He should have reached Rampur Bushehar by about 1.00 p.m. Thereafter unless

what time. Mr.Lalit Sharma, Advocate, has relied upon the judgment of the apex court in **General Manager, B.E.S.T. Undertaking, Bombay Vs. Agnes 1958-65 ACJ 473**. This judgment, in my opinion, is not at all applicable to the facts and circumstances of the present case. In that case the employee immediately after finishing the duty had travelled in another bus belonging to the employer to go home. The employer had provided this transport to the employee and, therefore, had gave rise to an implied obligation on the part of the employee to travel in the bus as part of his duty. In the present case, as I have already observed above, I could have gone so far as to hold that the employee was on duty till he returned to Rampur Bushehar. However, thereafter he could not be said to be on duty.

Learned counsel for the claimants has also relied upon the **National Insurance Company Vs.**

"The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it. The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered". In other words there must be a casual relationship between the accident and the employment. The expression "arising out of employment is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises `out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment the claim for

> employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess, on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it."

Thereafter the apex court in **Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another AIR 1997 SC 432** held that where the employee suffers injury on the way to the factory where he was employed, it could not be said that the accident arose out of and in the course of the employment. The relevant portion of the judgment reads as follows:-

his company or from somewhere else for purchasing the bicycle. But the fact remains that the bicycle belonged to him and not the employer. If he meets with an accident while riding his own bicycle on the way to his place of work, it cannot be said that the accident was reasonably incidental to the employment and was in the course of his employment. The deeming provision of S.51-C, which came into force by way of an amendment effected by Employees' Life Insurance (Amendment) Act of 1966 (Act No. 44 of 1966), enlarged the scope of the phrase "in the course of employment" to include travelling as a passenger by the employer's vehicle to or from the place of work. The legal fiction contained in S. 51-C, however, does not come into play in this case because the employee was not travelling as a passenger in any vehicle owned or operated by or on behalf of the employer or by some other person in pursuance of an arrangement made by the employer."

could definitely be said that he was not on duty at this time.

In view of the above discussion the appeal is allowed and the award of the Commissioner is set aside and the claim petition filed by the respondents claimants is dismissed. No costs.

April 14, 2006(K) (Deepak Gupta), Judge